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IN THE MATTER OF: ALEXANDRIA, LOUISIANA

DOCKET NUMBER: 92-2

DATE OF HEARING: MARCH 15, 1992

PAGES IN THIS TRANSCRIPT: 1-15 CORRECTED TRANSCRIPT

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Transcript of Proceedings

APR - 6 1992

Federal Communications Commission  
Office of the Secretary

BEFORE THE

Federal Communications Commission

-----X

In the Matter of: :

Docket Number:

ALEXANDRIA, LOUISIANA :

92-2

-----X

DATE: March 19, 1992

VOLUME: 1

PLACE: Washington, D.C.

PAGES: 1 - 15

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

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In the matter of: : Docket Number 92-2  
ALEXANDRIA, LOUISIANA :

- - - - - x

The above-entitled matter came on for  
Conference, pursuant to Notice before Edward J.  
Kuhlmann Administrative Law Judge, at 2000 L Street  
N.W., Washington, D.C., in Courtroom Number 1, on  
Friday, March 19, 1992, at 9:00 a.m.

APPEARANCES:

On behalf of Dry Prong Educational Broadcasting:

LEWIS COHEN, ESQ.

Cohen and Berfield, P.C.

1129 20th Street, N.W.

Washington, D.C. 20036

On behalf of Missionary Action Project:

F. JOSEPH BRINIG, ESQ.

Brinig & Bernstein

1818 N Street, N.W.

Washington, D.C. 20036

## P R O C E E D I N G S

(Time Noted: 9:00 a.m.)

JUDGE KUHLMANN: For Dry Prong Educational  
Broadcasting Foundation?

MR. COHEN: Your Honor, Lewis I. Cohen, but  
I'd like to note for the record, Your Honor, I'm  
appearing especially for purposes of the pre-hearing  
conference in that Dry Prong will be proceeding without  
counsel in connection with prosecuting its application,  
Your Honor.

JUDGE KUHLMANN: Then what is the purpose of  
your being here?

MR. COHEN: I'm just here this morning as a  
facilitator for Mr. Edwards in terms of trying to be  
helpful, interrupting what your orders and rulings are  
this morning. But that's the basis upon which we've  
been --

JUDGE KUHLMANN: I'm glad you told me

MR. COHEN: -- been retained, Your Honor.

JUDGE KUHLMANN: Yeah, okay.

MR. COHEN: It's a very limited  
participation, Your Honor.

JUDGE KUHLMANN: And is Mr. Edwards here this  
morning?

MR. COHEN: He's sitting on my right, Your

1 Honor.

2 JUDGE KUHLMANN: Mr. Edwards, does this mean  
3 that you're not going to have counsel in this  
4 proceeding?

5 MR. EDWARDS: We have not planned to at this  
6 point.

7 JUDGE KUHLMANN: Okay. That's your choice.  
8 It's going to be very difficult without counsel I'll  
9 assure you of that. And we're not going to permit you  
10 not to follow the rules in any respect, and the rules  
11 are complex and difficult. Okay?

12 These proceedings really aren't set up for  
13 not having counsel. They're just not, they're not  
14 traffic court or something like that. Okay.

15 For Missionary Action Projects?

16 MR. BRINIG: F. Joseph Brinig and Lawrence  
17 Bernstein.

18 JUDGE KUHLMANN: And you are going to  
19 represent these people in this proceeding?

20 MR. BRINIG: Yes, Your Honor.

21 JUDGE KUHLMANN: Okay, fine. All right.

22 MR. ZAUNER: Robert A. Zauner for the Chief  
23 of --

24 JUDGE KUHLMANN: Oh, I'm sorry, it's so  
25 unusual that the bill comes to a proceeding like this,

1 but I'm glad you did. Thanks. I'm sorry.

2 I've got all these things in mind that I want  
3 to do this morning.

4 I've set up some dates for doing things in  
5 the proceeding and unless there's some objection, this  
6 is how the proceeding will go.

7 I want you to outline the evidence on the  
8 issues that apply to your particular applicant, and the  
9 reason I say that is that Mission Action has to  
10 demonstrate that it is a qualified educational  
11 applicant, and so it will have a little extra to do in  
12 this outline. I will have to outline that evidence  
13 which it is going to submit which will meet issue one,  
14 I think it is. Yes, issue one.

15 Also if you, whatever the evidence is, you  
16 should also list the witnesses or the people who will  
17 give testimony in that regard and then issue three  
18 which is the 307(b) issue, and issue 4. And issue 4 is  
19 the alternative issue in case we don't decide the case  
20 under 307(b).

21 And that, in that case also, you should list  
22 all witnesses that will give testimony, and that should  
23 be done by March 30th. And it should be, all material  
24 aspects of your case should be outlined on that date.

25 Yes?

1 MR. COHEN: Your Honor, I want to make sure  
2 when I tell this to Mr. Edwards, your ruling, your  
3 order now insofar as the Dry Prong is concerned, which  
4 issues are they responsible for?

5 JUDGE KUHLMANN: I think, they're responsible  
6 for issue 3 and issue 4.

7 MR. COHEN: Thank you, Your Honor.

8 JUDGE KUHLMANN: And of course the  
9 environmental issues I'm going to eliminate as the  
10 Bureau has asked.

11 So and in the case of issue 4, you will have  
12 to list those witnesses who will provide information at  
13 the hearing or written testimony. All testimony in  
14 this proceeding will be in writing, and there may not  
15 be an opportunity for cross examination if I decide  
16 that it is unnecessary.

17 Now, the reason for the witnesses of course  
18 is so that you can direct discovery to each other after  
19 March 30th. All discovery in this proceeding must be  
20 completed by May 18th.

21 And on May 21st you will exchange written  
22 testimony. It means it must be exchanged on that date  
23 and a copy of it must be given to me and to Bureau  
24 counsel, but it's not filed with the Secretary, so  
25 please don't do that.

1 MR. COHEN: That date was?

2 JUDGE KUHLMANN: May 21st.

3 Then, on May 26th, you will designate  
4 witnesses, and you can do that by fax or you can do it  
5 by telephone, but you must send a copy of it, whatever  
6 witnesses you're designating to me, not to the  
7 Commission's Secretary.

8 Objections should be filed with the Secretary  
9 and they should be filed on May 28th, and the hearing  
10 will be held of course on June 4th, which we know  
11 already.

12 On May 30th, you should exchange all  
13 documents which are going, which would be relevant to  
14 the issues that apply to you. In the case of  
15 Missionary Action, it's issue 1, 3, 4. In the case of  
16 Dry Prong, it's issue 3 and 4.

17 MR. COHEN: What do you mean, Your Honor,  
18 exchange of documents?

19 JUDGE KUHLMANN: All documents that have  
20 anything to do with those issues that you have in your  
21 control or that would support your case. I don't think  
22 it's going to be hard to figure out.

23 Are there any questions? Okay, fine.

24 Will the Bureau participate in the 307(b)  
25 issue, is that it?



1 MR. ZAUNER: Yes, Your Honor.

2 JUDGE KUHLMANN: Oh, okay, good. I was going  
3 to suggest that you might want to make the 307(b)  
4 showing jointly at least in part. It seems to me that  
5 part a could easily be done jointly and you could do --  
6 so you might want to talk that over with Mr. Edwards.  
7 Mr. Edwards might want to talk it over with you.

8 What is the likelihood, Mr. Edwards, of a  
9 share-time operation here?

10 MR. EDWARDS: Your Honor, I don't feel that  
11 would be something that --

12 JUDGE KUHLMANN: Have you talked to the other  
13 side about it?

14 MR. EDWARDS: We haven't talked at all.

15 JUDGE KUHLMANN: I want you to do that, and I  
16 want you to report to me on -- I'm going to set some  
17 dates. I want you to actually sit down and talk with -  
18 -

19 MR. EDWARDS: Your Honor?

20 JUDGE KUHLMANN: Yes?

21 MR. EDWARDS: We've not been able to meet  
22 with --

23 JUDGE KUHLMANN: Well, I'm ordering you to  
24 now. I mean they're not going to have a choice in the  
25 matter.

1 MR. EDWARDS: Very good.

2 JUDGE KUHLMANN: When I say something has to  
3 be done, it has to be done. There isn't a choice, that  
4 is, if you want to pursue your application, and it may  
5 be that somebody in this proceeding will decide not to.

6 Let's see. Let's give everybody plenty of  
7 time. I want the first report by April 8th. And as  
8 far as I'm concerned, Mr. Brinig, you can meet with Mr.  
9 Edwards if you wish, but I want the principals to be  
10 involved. I want your principals to seriously consider  
11 this. It's an obligation that we have. I mean the  
12 issue is in the proceeding.

13 MR. BRINIG: It's not a problem as far as  
14 we're concerned, Your Honor. We will do it.

15 JUDGE KUHLMANN: Okay, good. Then now you're  
16 not going to have any problems.

17 MR. EDWARDS: Thank you.

18 JUDGE KUHLMANN: The first report should be  
19 on April 8th, and we'll ask Mr. Brinig to make that  
20 report, and what I want to know in that report is what  
21 steps you took to determine whether you could come to  
22 some sort of share time arrangement.

23 Then the next report we'll do on April 30th,  
24 and maybe by that time you will have agreed to do it,  
25 and that will end the case and that would be nice. And

1       that report, Mr. Edwards, you can make.

2               Okay, then, Section C, well, that analysis  
3       you should each file separately, because you'll each  
4       obviously have a different opinion on that. Okay?

5               MR. COHEN: What were you referring to on  
6       that?

7               JUDGE KUHLMANN: I'm looking at issue 3,  
8       which is the 307(b) issue and it's divided into three  
9       parts.

10              MR. EDWARDS: Yes, thank you.

11              JUDGE KUHLMANN: And the third part is, you  
12       know, why you think you should get it.

13              MR. EDWARDS: Sure. Thank you. I just  
14       didn't --

15              JUDGE KUHLMANN: So you're all set.

16              MR. EDWARDS: I just lost you for a second.

17              MR. EDWARDS: Thank you.

18              JUDGE KUHLMANN: I assume you'll have some  
19       viewpoint on that.

20              Now, I don't want you just to come and tell  
21       me that you think you should win under 307(b). I want  
22       you to give me the legal reasons and the facts as to  
23       why that should be the case, and I want that all in  
24       outline form by March 30th.

25              And I also want you to address part b. In

1 other words, in part b I want you to tell me whether  
2 you think a share time will work and if it will work,  
3 how it would work. I want to hear about it.

4 Is there anything else? Now, tell me, Mr.  
5 Edwards, what Dry Prong means?

6 MR. EDWARDS: It's the name of a community.

7 JUDGE KUHLMANN: Oh, I figured it had to be.  
8 I just didn't know. It's such an unusual name, and I  
9 thought it must be an area or a community or something  
10 like that.

11 MR. EDWARDS: When they built the mill on the  
12 fork of the creek that goes dry in the summer.

13 JUDGE KUHLMANN: Oh, that's how they called  
14 it --

15 MR. EDWARDS: Hence, the term, Dry Prong.

16 JUDGE KUHLMANN: Good, that's interesting.

17 The request for admission of facts in January  
18 in the documents I'm going to just dismiss, because I'm  
19 setting up a different system now. And I think this  
20 will work quite well.

21 Now, this doesn't mean you cannot request  
22 documents after you look at a person's proposal for  
23 their case. In fact, you may decide that there are  
24 other documents that they didn't produce that they have  
25 that would be useful to the case, and you should do

1           that right after March 30th. Do not let that go.

2                       Also you can take depositions in this case if  
3           you wish, or you can use interrogatories if you think  
4           that's helpful. I think it would be a better case for  
5           depositions somehow, especially since one of the  
6           applications isn't going to have counsel. I think it's  
7           easier that way. I don't know. That may just be in my  
8           mind. But I hope so.

9                       Mr. Edwards, we don't have your phone number.  
10          How can we get hold of you if we went to talk to you?

11                      MR. EDWARDS: Area code 318.

12                      JUDGE KUHLMANN: Uh-huh.

13                      MR. EDWARDS: 899-5837.

14                      JUDGE KUHLMANN: And that's where you can be  
15          reached during the day?

16                      MR. EDWARDS: Well, if I'm not there, they'll  
17          know where I am.

18                      JUDGE KUHLMANN: Okay, because if things come  
19          in that are not right, Ann Cooper who works with me  
20          will follow up on that, because, you know, we have to  
21          make sure everything works correctly. And I assume  
22          that Mr. Cohen is going to explain to you about serving  
23          of documents and things like that.

24                      MR. EDWARDS: Yes, he is.

25                      JUDGE KUHLMANN: Because otherwise we're

1 going to have awful problem here, and that often is the  
2 case. It looks simple, but it isn't so simple to get  
3 all of this working. Lawyers really do serve purpose -  
4 - I think. I say that at some risk.

5 Okay, is there anything else here? Do you  
6 have any questions at all?

7 MR. ZAUNER: Your Honor, the only things that  
8 I would say is that looking at this case, it looks like  
9 a good one for a settlement of some kind, whether it  
10 involves a sharing time arrangement or perhaps some  
11 other arrangement.

12 We have two educational proposals before us,  
13 a non-commercial, and rather than spend their money  
14 battling heads against each other, it might be better  
15 for them to look, to see if they could get together and  
16 effectuate their proposal that much sooner and at that  
17 much less expense. And I would encourage them to do  
18 so.

19 JUDGE KUHLMANN: Well, I noticed that Adel  
20 Smith said that Christ was going to be a mediator here,  
21 Mr. Edwards, so you might want to get in touch with him  
22 and see if you can get that going.

23 MR. EDWARDS: I spoke with him this morning.

24 JUDGE KUHLMANN: Okay.

25 MS. EDWARDS: May I ask a question?

1 JUDGE KUHLMANN: No, you can't. This is not  
2 a free for all.

3 MR. BRINIG: Your Honor, just an  
4 administrative question. We have made some tentative  
5 settlement discussions already. We have discussed a  
6 proposal whereby Mr. Edwards' applicant might put in an  
7 engineering amendment which would remove the mutual  
8 exclusivity of the two applicants.

9 JUDGE KUHLMANN: Well, that's great.

10 MR. BRINIG: There's no reason why Your Honor  
11 couldn't grant two applications separately if there was  
12 no mutual exclusivity is there in this case? We  
13 wouldn't have to have a hearing if there was no mutual  
14 exclusivity.

15 JUDGE KUHLMANN: Yeah, we've done that in AM  
16 cases. I don't know the answer to that. What do you  
17 think, Mr. Zauner?

18 MR. ZAUNER: I can see any reason for them  
19 not --

20 JUDGE KUHLMANN: I can't either, but I guess  
21 we'd like to see the proposals first.

22 MR. EDWARDS: I understand that, Your Honor.  
23 I just thought I might --

24 JUDGE KUHLMANN: I think --

25 MR. EDWARDS: We'd like to work something out

1           so we don't have to do this.

2                   JUDGE KUHLMANN: Yeah, I don't see why not.  
3           My recollection, I can't remember. Many of these  
4           educational things have in fact been resolved that way.  
5           I'm trying to decide which one I had last that was  
6           resolved that way, but I believe it was in Connecticut  
7           where we ultimately granted everyone.

8                   No, that's a good solution to the problem.

9                   MR. EDWARDS: That's the direction we're  
10          trying to, Your Honor. It involves some engineering  
11          work and we're working on that now.

12                   JUDGE KUHLMANN: Okay, I would do it right  
13          away, because I'm not going to slow down the process  
14          for that. And people have a tendency to wait on those  
15          matters, and I don't think that's a good idea.

16                   Maybe I had a case that you were in, Mr.  
17          Brinig, where we did that.

18                   MR. BRINIG: I don't remember an educational  
19          case like that, Your Honor, or an AM case. I did most  
20          of my cases before you had been FM and they're  
21          traditional commercial cases where only one could be  
22          granted.

23                   JUDGE KUHLMANN: Well, I know I've had some  
24          where that's been --

25                   MR. BRINIG: I thought you could. That's the



1 reason I proposed it.

2 JUDGE KUHLMANN: I think so.

3 MR. BRINIG: Okay.

4 JUDGE KUHLMANN: I don't see any problem with  
5 it, but we'll have to look at what you're going to do.

6 Okay, good enough. We're adjourned and I'll  
7 expect to receive the filing on March 30th. I'll put  
8 out an order listing these dates, Mr. Cohen.

9 MR. COHEN: Thank you, Your Honor. I was  
10 going to ask you to do that.

11 JUDGE KUHLMANN: Yes, I will do that, and I'm  
12 putting out an order dealing with the environmental  
13 question and the discovery request.

14 MR. COHEN: Thank you, Your Honor.

15 JUDGE KUHLMANN: I'm in the process of  
16 writing it right now, and I assume we'll get it ready  
17 and it will come out some time next week.

18 MR. COHEN: Thank you.

19 (Whereupon, at 9:15 a.m., the hearing in the  
20 above-styled matter was adjourned.)

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C E R T I F I C A T E

This is to certify that the attached proceedings  
before the Federal Communications Commission

in the matter of: Alexandria, Louisiana

Docket Number: 92-2

Place: Washington, D.C.

Date: March 19, 1992

were held as herein appears, and that this is a true  
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